

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
NORTHWEST HARDWOODS, INC.,)
)
Appellant,)
)
vs.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 436

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of two civil penalties totaling \$500.00 for alleged smoke emission violations of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 10th day of January, 1974, at Seattle, Washington; and appellant Northwest Hardwoods, Inc. appeared through its manager of planning and engineering, Michael Carter and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Walt Woodward and Mary Ellen McCaffree; and the Board having considered the sworn testimony,

1 exhibits, records and files herein and having entered on the 15th day
2 of January, 1974, its proposed Findings of Fact, Conclusions of Law
3 and Order; and the Board having served said proposed Findings, Conclusions
4 and Order upon all parties herein by certified mail, return receipt
5 requested and twenty days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the
8 premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 15th day of
11 January, 1974, and incorporated by this reference herein and attached
2 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 13th day of February, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16
17 Walt Woodward
18 WALT WOODWARD, Chairman

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20 Mary Ellen McCaffree
21 MARY ELLEN McCAFFREE, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

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FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of two civil penalties totaling \$500.00 for alleged smoke emission violations of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in the Washington Commerce Building, Seattle, at 11:30 a.m., January 10, 1974.

Appellant was represented by its manager of planning and engineering, Michael Carter, respondent appeared through Keith D. McGoffin.

Eugene Barker, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 By stipulation of appellant in open hearing appellant was in
6 violation of Section 9.03(a) of Regulation I on June 22, 1973 and on
7 June 27, 1973 as cited in Notice of Civil Penalty Number 1002 and
8 Notice of Civil Penalty Number 1003. The hearing therefore was
9 restricted to testimony on the reasonableness of those two civil
10 penalties, which are the subject of this appeal and which in each
11 instance is the maximum allowable amount which respondent could levy
12 for a violation of its Regulation I.

13 II.

14 Appellant's plant is located in Snohomish County just south of
15 Arlington. On January 2, 1973, representatives of both appellant and
16 respondent conferred on appellant's intention to install a new natural
17 gas fired boiler; at that conference respondent notified appellant of
18 respondent's requirements relative to Notices of Construction. On
19 April 10, 1973, with the new boiler then on line and in production,
20 respondent served appellant with a notice of violation, citing
21 Section 6.03 of respondent's Regulation I for failure to file a Notice
22 of Construction with respondent. There was no civil penalty invoked
23 for the violation. On June 4, 1973 respondent served appellant with
24 three notices of violation, citing Sections 6.03, 9.03 and 9.04 in
25 connection therewith. Civil penalties totaling \$250.00 also were
26 served on appellant and these civil penalties were paid. On June 22, 1973

27 FINDINGS OF FACT

CONCLUSIONS AND ORDER

1 and June 27, 1973 notices of violation leading to the instant penalties
2 under concern in this appeal were served on appellant. On July 12,
3 1973 respondent approved a notice of construction for a boiler using
4 natural gas and oil as standby; said notice was accompanied by a letter
5 which said respondent could not approve at that time the burning of
6 wood waste until more detailed plans were submitted to satisfy
7 respondent that the boiler would not violate Section 9.03 of Regulation
8 I. On August 8, 1973 respondent approved a new notice of construction,
9 a permit for a sander dust and natural gas boiler, but the notice
10 carried the statement that this approval was not a waiver of liability
11 for infractions of Regulation I.

12 III.

13 Appellant's new natural gas fired boiler is a unique attempt by
14 appellant to devise a process where its plant's sander dust, which
15 otherwise would be useless waste, can be used to provide fuel for the
16 operation of the boiler. This process, believed to be a first of its
17 kind experiment, has encountered many problems including some violations
18 of respondent's visual emission standards. Both the company and
19 respondent have cooperated in a sincere effort to make this new process
20 work and in recent months there has been a marked improvement in the
21 emissions. From time to time, however, the device still violates
22 respondent's emission standards.

23 IV.

24 There was no testimony by respondent that at any time during the
25 many conferences with appellant did respondent point out to appellant
26 that it could seek a variance which might permit appellant to test

27 FINDINGS OF FACT
CONCLUSIONS AND ORDER

1 its facility without being charged with violations.

2 From these findings, the Pollution Control Hearings Board comes
3 to these

4 CONCLUSIONS

5 I.

6 Appellant was in violation of Section 9.03 of respondent's
7 Regulation I on June 22 and 27, 1973 as cited in Notice of Civil
8 Penalty Number 1002 and Notice of Civil Penalty Number 1003.

9 II.

10 In view of appellant's earnest desire to develop an energy saving
11 process and in view of its apparent friendly cooperation with
12 respondent in this matter, the two maximum civil penalties appeared to
13 be unreasonable. Appellant, however, cannot expect respondent
14 to waive obvious violations of its regulations unless appellant
15 applies for a variance which would permit it to test its experimental
16 device.

17 Therefore, the Pollution Control Hearings Board makes this

18 ORDER

19 The appeal is denied and appellant is directed to pay respondent
20 forthwith the sum of \$250.00, the balance of \$250.00 to be suspended
21 pending no similar violations for a period of six months from the date
22 this order becomes final

23 DONE at Lacey, Washington this 15th day of January, 1974.

24 POLLUTION CONTROL HEARINGS BOARD

25 Walt Woodward
26 WALT WOODWARD, Chairman

27 FINDINGS OF FACT
CONCLUSIONS AND ORDER

Mary Ellen McCaffree
MARY ELLEN McCAFFREE, Member